



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	1/15/03	Bill No:	AB 128
Tax:	Internet	Author:	Campbell
Board Position:		Related Bills:	

BILL SUMMARY

This bill would extend the sunset date of California's Internet Tax Freedom Act from January 1, 2004, to January 1, 2008.

ANALYSIS

Current Law

State law: Part 32 (commencing with Section 65001) of Division 2 of the Revenue and Taxation Code was added by AB 1614 (Ch. 351, Stats. 1998) to create the "California Internet Tax Freedom Act." Subdivision (h) of Section 65002 states the legislative intent that no existing or future state taxes or state fees be imposed by the state in a discriminatory manner upon Internet access or online computer services.

Subdivision (a) of Section 65004 specifies that for the period January 1, 1999 through January 1, 2004, no local government may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. Subdivision (b) of Section 65004 provides that this prohibition does not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

Under existing law, Part 18.3 (commencing with Section 38061) of the Revenue and Taxation Code, as added by SB 1933 (Stats. 2000, Ch. 619), the California Commission on Tax Policy in the New Economy was created to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified. Section 38066 required the Commission to submit an interim report to the Governor and the Legislature not later than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting. The Commission issued the interim report to the Governor and the Legislature in November 2002.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Federal law: Under Title XI and XII of the Omnibus Appropriations Act of 1998, approved as H.R. 4328 by Congress on October 20, 1998 and signed as Public Law 105-277 on October 21, 1998, the federal "Internet Tax Freedom Act" was created to do the following:

- Prohibit state and local governments from taxing Internet access from October 1, 1998 until October 21, 2001.
- Prohibit state and local governments from imposing taxes that would subject buyers and sellers of electronic commerce to taxation in multiple states and protect against the imposition of a new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory tax collection requirements imposed on out-of-state businesses through strained interpretations of "nexus."
- Establish a commission to study electronic commerce tax issues and report back to Congress after 18 months on whether electronic commerce should be taxed, and if so, how such commerce can be taxed in a manner that ensures that it will not be subject to special, multiple, or discriminatory taxes.
- Specify that it is the Sense of Congress that there should be no federal taxes on Internet access or electronic commerce.
- Declare that the Internet should be a tariff-free zone.

On November 28, 2001, H.R. 1552 was signed by the President to extend the Internet Tax Freedom Act until November 1, 2003.

Proposed Law

This bill would amend subdivision (d) of Section 65004 of the Revenue and Taxation Code to provide that the Internet Tax Freedom Act would remain in effect until January 1, 2008.

Background

Assembly Bill 1614 (Ch. 351, Stats. 1998) established the California Internet Tax Freedom Act and imposed a three-year moratorium on the imposition of new or discriminatory taxes on Internet access and online computer services.

A measure to extend the sunset date was considered during the 2000 Legislative Session. That measure, AB 1784 (Lempert, et al.) was enacted into law (Chapter 618). However, the bill never became operative because the bill also contained an uncodified section that provided that AB 1784 would only become operative if Assembly Bill 2412 was enacted and became effective on or before January 1, 2001. Since Assembly Bill 2412 was vetoed by the Governor, the provisions of AB 1784 never became operative. (Assembly Bill 2412, Migden and Aroner, would have required certain out-of-state dot-com retailers to collect the applicable use tax if they were related to a substantially similar retailer operating in California, as specified.)

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Two bills to extend the sunset date were introduced during the 2001 Legislative Session. Assembly Bill 228 (J. Campbell) would have extended the sunset date until January 1, 2005. AB 228 was never heard in the Assembly Revenue and Taxation Committee.

Another measure, Senate Bill 394 (Ch. 343, Stats. 2001) extended the sunset date until January 1, 2004, provided that the interim report required by Section 38066 was submitted to the Governor and the Legislature on or before December 1, 2002. If the report was not issued timely, the sunset date would be extended only until January 1, 2003. As indicated previously, the report was issued in November 2002, so the sunset date for the California Internet Tax Freedom Act was extended until January 1, 2004.

COMMENTS

1. **Sponsor and purpose.** The measure is sponsored by the author. His office stated that it is intended to continue a responsible tax policy regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.
2. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** The current Federal Internet Tax Freedom Act will sunset on November 1, 2003. Two bills pertaining to Federal Internet taxation have been introduced in the 108th Congress. S. 52, introduced by Senator Wyden, and HR 49, introduced by Congressman Cox, would make the federal moratorium permanent.
3. **This bill would not impact the Board's administration of current taxes.** The moratorium the Internet Tax Freedom Act imposes is on new taxes, not existing taxes.
4. **California Commission on Tax Policy in the New Economy Interim Report.** Section 38066 of the Revenue and Taxation Code required the California Commission on Tax Policy in the New Economy (Commission) to submit an interim report to the Governor and the Legislature not later than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting. The interim report was submitted on November 25, 2002. The report identified tax policy questions that need to be addressed and discussed current tax law. The interim report did not provide any recommendations or solutions.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

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REVENUE ESTIMATE

Enactment of this measure would have no impact on the State's or local jurisdictions' sales and use tax revenues nor would it impact the revenues derived from the imposition of the Emergency Telephone Users Surcharge or any other fee or tax administered by the Board.

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